ED268258

An Open Tech Project

SUPERVISING
INDUSTRIAL RELATIONS

82: Discipline and the Law

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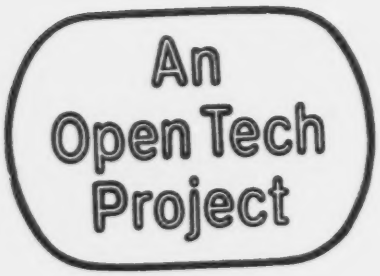
82: DISCIPLINE AND THE LAW

John Stirling



The CHOICE programme is an Open Tech sponsored project managed by the Northern Regional Management Centre in conjunction with the Northern Consortium of Colleges and the National Examinations Board for Supervisory Studies.

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ISBN 0 948023 04 X

First published in the U K - 1985

Northern Regional Management Centre
Derwent House, Washington Town Centre
Washington, Tyne & Wear NE38 7ST

This work was produced under an Open Tech contract with the Manpower Services Commission. The views expressed are those of the authors and do not necessarily reflect those of the MSC or any Government Department.

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John Stirling
Discipline & the Law (Number 82 in the CHOICE SERIES of learning units)

Series Editor: Harry V Pardue
Northern Regional Management Centre.

CONTENTS Page

PART A KNOWING THE RULES

1 Introduction 2

2 Disciplinary offences 2

3 Rules 4

4 Getting information 11

5 Making judgements 17

6 Summary 21

PART B HANDLING DISCIPLINE

1 Introduction 22

2 Getting the facts 22

3 ACAS Codes of Practice 28

4 Written Records 28

5 The disciplinary interview 30

6 Summary 36

PART C DISCIPLINARY PROCEDURES

1 Introduction 37

2 Parts to a disciplinary procedure 37

3 Scope of procedures 40

4 Procedures in practice 40

5 Sound procedures 42

6 Warnings 46

7 Appeals 49

8 Records 49

9 Summary 52

	Page
PART D UNFAIR DISMISSAL AND ACAS	
1 Introduction	53
2 The Industrial Tribunal	53
3 Unfair dismissal statistics	55
PART E UNFAIR DISMISSAL AND THE LAW	
1 Introduction	58
2 The Law	58
3 Kinds of dismissal	58
4 Fair dismissal	59
5 Claims against dismissal	63
6 Acting reasonably	64
7 Industrial Tribunals cases	65
8 Summary	69
PART F PERFORMANCE CHECKS	
1 End Check	70
2 Tutor Check	74
3 Work-based Project	76
PART G UNIT REVIEW	78
1 Extensions	79
2 References	85

WORKING GUIDE TO THIS UNIT IN YOUR DEVELOPMENT PROGRAMME

This Unit is now your personal property - it's not for handing back to your training officer or to a tutor. It is your working book.

The Contents will increase in value to you each time you write on one of its pages. This is a working text for your personal notes - without notes its value is limited.

Qualifications forget about certificates and diplomas - you don't need them for this programme. What you do need is the wish:-

* to do your job better
* for personal development

Your study time is really up to you - we guess you will need about 8 hours in total. But it's your time - spend as long as you like.

How am I doing? you can judge for yourself by checking out how well you cope with the tasks we call Activities and Self Checks which occur throughout the unit. You can also get the Tutor Check and/or the Work Based Project to your tutor for an unbiased view of your progress.

Work Pace it's really up to you and depends on your interest. However, if you do well on the Activities and Self Checks, you could afford to speed up a little. Of course, if you don't do as well as you expect then you could slow down a little or flick back into the unit for a quick review of the more difficult ideas.

When in doubt - ask or seek help from:

* your family and friends
* colleagues at work
* your company training staff
* other open learners
* your tutor, by phone, by a visit to your support centre or by dropping your tutor a line through the post.

Don't worry if what you learn doesn't seem to be of use to you now, remember that times change - it may be useful one day. Anyway, just knowing more improves personal confidence.

So now make a start:-

82: DISCIPLINE AND THE LAW by John Stirling

ABOUT THIS UNIT

Disciplinary problems occur every day at work and it is usually you the supervisor who has to take the first action. In a small number of cases disciplinary action can end in dismissal and even in a legal claim that the dismissal was unfair.

If discipline is to be dealt with properly and fairly then it is vitally important to all concerned that we get the first step right. A mistake which evenutally ends up in a legal case is always a waste of time and money.

- - -

IN THIS UNIT WE WILL:

* identify what a disciplinary offence is
* explore the different ways that organisations use to deal with matters of discipline
* appreciate the importance of the supervisor in discipline
* consider the impact of the law on the handling of discipline

- - -

AUDIO TAPE
Side 1

Before you continue through the unit, you should listen to side 1 of the audio tape that accompanies this unit. You will find it useful if you refer to the unit objectives shown below whilst you listen to the tape. You may wish to make the objectives clearer to yourself by making a note or two on the page as you listen.

- - -

OBJECTIVES

When you have completed this unit you will be BETTER ABLE to:

* **identify a disciplinary offence**
* **understand how the law affects disciplinary problems**
* **list the vital features of a disciplinary procedure**
* **operate your company's disciplinary procedures**

PART A KNOWING THE RULES

1 Introduction

In common with other supervisors you are the first person in line when problems arise in your section. You know that people will come to you with questions about anything from the leaky tap in the company toilet to how to handle their divorce!

But amongst the more important problems that will come your way are those concerning discipline. When they arrive you will need to know three things:

* Is this really a discipline offence?
* How should I deal with it?
* What are the implications of my actions?

2 Disciplinary offences

The first point then, raises the question: what is a discipline offence? Let's start by thinking about the discipline offences you may have had to deal with at work yourself or perhaps some that you have heard about.

ACTIVITY 1
Time guide
5 mins

Note down some examples of disciplinary offences. Try and think of three or four:

eg stealing

* _____
* _____
* _____
* _____

Here are some typical discipline offences:

* fighting
* lateness
* disobeying an order
* smoking in a non-smoking area
* verbal abuse
* abusing company equipment
* stealing
* horse-play

I'd take a guess that you have come up with examples that aren't on this list. That's because the list of disciplinary offences is as long as our imaginations can make it.

However, if we think about it, they all involve one thing.

Can you fill in the missing word ?

ALL DISCIPLINARY OFFENCES INVOLVE BREAKING A

_____

I hope you have come up with the word rule or something very close.

This is our first important point about discipline:

DISCIPLINARY OFFENCES INVOLVE A BREACH OF A RULE OR RULES

There are of course all sorts of rules that come into our lives both at work and at home. For instance:

In a football match there are very clear rules. For example they tell you who can touch the ball with their hands or when the end of the game will be.

There are also things we have to do (or procedures we have to follow) when the rules are broken. If the ball goes off the pitch then a throw-in or corner kick is awarded.

If a player makes a bad tackle then a free kick is awarded and the player himself may be punished by having his name taken or even by being sent off the pitch.

Let's draw out the main points from this example and see how they could be applied to a disciplinary case:

Rules

1. The referee can't decide if a foul has been committed if he didn't know the rules.

WE CAN'T DECIDE IF AN INCIDENT IS A DISCIPLINARY OFFENCE UNLESS WE KNOW THE RULES

Procedures

2. The referee needs to know how to handle things when the rules are broken.

WE NEED A PROCEDURE FOR HANDLING DISCIPLINARY OFFENCES

Action

3. The referee and the players need to know what will happen if a player makes a bad tackle.

WE ALL NEED TO KNOW WHAT ACTION WILL BE TAKEN IF SOMEONE BREAKS THE RULES

We can now see that discipline involves three things:

*** RULES * PROCEDURES * ACTION**

We will look at Rules in this section and at Procedures and Action in our later sections.

3 Rules

Let's now look at RULES in some detail.

ACTIVITY 2
Time guide
5 mins

Note down some examples of the rules which affect the people at your workplace eg Rules about working times

* _____

* _____

* _____

Typical rules in most organisations:

* rules about safety
* rules about operating machinery
* rules about overtime
* rules about the organisation's property
* rules about how to behave
* rules about who does what

You may have included some rule, not on this list, which is special to your company. The rules that cover your workplace will come from THREE different sources. Let's look at each of these in turn.

* RULE OF LAW

EXTENSION 1
page 79

THE LAW applies to us whether we are at home, out walking or at work. Somebody who steals something at work is breaking the rule of law. The same might also be said of somebody who is breaking health and safety rules.

* COMPANY RULES

These are set by your organisation to ensure that everything runs smoothly. Rules about overtime, what clothes to wear, who can operate a certain machine, can all be COMPANY RULES. They may well be different from organisation to organisation.

EXTENSION 2
page 79

* CUSTOMARY RULES

These sort of rules we sometimes call 'unwritten laws'. Nobody has to tell a man that he doesn't use the ladies' toilet - but it's a rule all the same!

Some disciplinary offences will breach more than one of these kinds of rule. This often depends on how serious the offence is, for example:

A SHORT SCUFFLE on the shop floor may be a breach of COMPANY RULES. A LARGE FIGHT involving physical injury would also break the RULE OF LAW.

This question of how serious an offence is also depends on what kind of rule is broken. We need to be aware that something which is a CUSTOMARY RULE in one workplace can be a COMPANY RULE in another.

For example employees who deal with the public may be expected to dress smartly - A CUSTOMARY RULE. If they fail to do so then this custom may be changed to a COMPANY RULE.

The following table will help us to be clear about the differences between kinds of rules:

In the table below we can see some examples of our three different types of rule.

Type of Rule	Example
Law	assault; sacking someone unfairly
Company	wearing hard hats; no smoking on the shop floor
Customary	chef's wearing tall hats; counter clerks not using bad language in a bank

We may also recall that we said:

SOME THINGS THAT PEOPLE DO MAY BREAK MORE THAN ONE RULE

ACTIVITY 3
Time guide
8 mins

Look at the examples of disciplinary offences below and think about which type of rule they would break.

Put each example in the appropriate box, or boxes if it breaks more than one rule.

* stealing
* fighting
* lateness
* shouting in the office
* behaving in a dangerous way

LEGAL RULES	eg stealing
COMPANY RULES	eg stealing
CUSTOMARY RULES	eg stealing

The table might look like this - each company will have their own rules and this may affect where certain offences appear:

LEGAL RULES	stealing; fighting; behaving in a dangerous way
COMPANY RULES	stealing; fighting; lateness; behaving in a dangerous way
CUSTOMARY RULES	stealing; fighting; shouting in the office; behaving in a dangerous way

So far we have seen that:

DISCIPLINARY OFFENCES BREAK RULES

and

SOME MAY BREAK MORE THAN ONE TYPE OF RULE

However, all breaches of rule are disciplinary offences. Whether we decide to take disciplinary action will depend on the circumstances.

In order to make up our minds about whether breaking a rule warrants disciplinary action or not we must take into account the circumstances. The best way to understand this is to look at some examples. Before we do, let's check what we have learnt so far.

SELF CHECK 1
Time guide
5 mins

Respond by completing each sentence with a suitable word or words.

1. All disciplinary offences involve a breach of _____.

2. There are three different types of rules. These are:

* _____

* _____

* _____

The answer to this self check is here in the following words, so you'll need to check out your answers carefully. 1 rule - by our own definition a breach of rule is a breach of discipline and therefore is a disciplinary offence; 2 The three different types of rules are: * legal rules, * company rules, * customary rules.

Let's now turn to some real disciplinary cases.

As a starting point let's remind ourselves that a disciplinary offence involves breaking a RULE.

So, in any of our consideration we need to think about:

* Whether any rules have been broken

* What those rules were

We can now move on to our next self check:

SELF CHECK 2
Time guide
15 mins

Look at each of the incidents below and decide whether or not it is a disciplinary case. When you have decided, write Yes; No; or More Information in the space provided. Remember, we have decided that disciplinary cases involve breaking rules.

1. Mrs Jones works in the offices at her company and one day she spends some time going round the other staff collecting money for a local hospital.

   Is this a disciplinary offence - Yes, No, OR More Information?

   ---

2. You have heard a rumour that half a dozen people in your department are going for a lunchtime drink with a colleague who is leaving that day. You are the supervisor but say nothing beforehand. They arrive back half an hour late and although they are capable of working they are in a noisy mood.

   Is this a disciplinary offence - Yes, No, OR More Information?

   ---

3. You work as supervisor at a printing firm and find Bob Ollis running off some writing paper with a home address printed on the top. It is clearly not work for the company but when you challenge Bob he tells you that Mr. Smith the Sales Manager, has told him to do it for his personal use.

   Is this a disciplinary offence - Yes, No, OR More Information?

   ---

4. Management has got fed up with complaints from non-smokers about smoking in the office. A month ago it decided that there would be smoking and no smoking offices. Lily Shah is a chain smoker and works in the smokers' office. However, her work takes her into the other office four or five times a day and she never bothers to leave her cigarette behind.

   Is this a disciplinary offence - Yes, No, OR More Information?

   ---

5. David Ross arrives at work half an hour late one morning.

   Is this a disciplinary offence - Yes, No, OR More Information?

The answer to this self check is here in the following words, so you'll need to check out your answers carefully. 1. The first incident concerned Mrs. Jones collecting money for the local hospital. Yes - this is a disciplinary offence. Mrs. Jones is doing personal work in the company's time. If she wanted to collect money she should do it in her own time. 2. This is the incident about the lunchtime drink. Yes - they have clearly breached the rules about timekeeping and it could be easily argued that their behaviour is not up to company standards. 3. In this incident the printer was doing some private work for the Sales Manager. Yes - Private work is effectively stealing from the company so a rule has been broken. There has been a breach of rule but you have a problem in deciding whether Bob Ollis, Mr Smith or both are in breach of the rules. 4. This incident concerns the battle between the smokers and the non-smokers. Yes - a company rule has been broken. Management has said the room is a no smoking one, so Lily Shah's behaviour is wrong. 5. The incident of Mr Ross's lateness. Yes - a company rule on time keeping has been broken.

Perhaps you are dissatisfied with one or other of the answers to Self Check 2. You may have put a number of no answers down and feel strongly that you are right. You may also have said that **MORE INFORMATION** was needed in most or all of the cases. But, let's remember how we judge discipline. In each of these examples a rule of some kind was broken.

This doesn't mean that strong disciplinary action automatically follows all breaches of rules. In some cases it will, but perhaps in the majority a quick word is all that is necessary. So we really need to think of disciplinary cases in two parts:

* **was there a breach of rule?**

* **if there was, then what is the appropriate action?**

Judging whether a rule was broken seems to be easier than:

* judging the severity of the breach;

* deciding who was to blame;

* deciding on the appropriate action.

IN MOST OF OUR PREVIOUS CASES WE DID NOT KNOW ENOUGH ABOUT THE CIRCUMSTANCES TO MAKE A PROPER JUDGEMENT ABOUT BLAME OR ACTION

It would be a mistake to jump to a hasty decision about discipline case without fully understanding all the circumstances.

Therefore:

IN ORDER FOR US TO KNOW THE CIRCUMSTANCES WE HAVE TO CARRY OUT INVESTIGATIONS TO UNCOVER THE FACTS OF THE CASE

If we look in more detail at two of our previous cases we will appreciate the importance of proper investigation of the circumstances.

4. Getting information

Let's start with the case about Mrs. Jones repeated here:

ACTIVITY 4
Time guide
5 mins

MRS JONES:

Mrs Jones works in the offices at her company and one day she spends some time going round the other staff collecting money for a local hospital.

Jot down FOUR pieces of information that you think you would need before making a proper judgement of her case.

* _____
* _____
* _____
* _____

Your responses may be included here in this extended list:

* How long did Mrs. Jones take to make her collection?
* Has she or anyone else in the organisation done this sort of thing before?
* Is there a well known management rule about what she did?
* What reasons did she have for doing it?
* Is Mrs. Jones' general record a good one?
* Is it important that she does not leave her desk?
* Has she got permission from somebody?

Let's move on to the incident involving David Ross:

ACTIVITY 5
Time guide
5 mins

DAVID ROSS arrives at work half an hour late one morning.

Jot down FOUR pieces of information that you think you would need before making a proper judgement in David's case.

* _____
* _____
* _____
* _____

Your responses may be included in this extended list:

* How important is it for the company that David arrives on time?
* Has he been late before and if so, how many times?
* Are there any company rules about time-keeping?
* How do you know he was late? Is there proof?
* What was the reason for his lateness?
* Had he told somebody in advance that he would be late?
* Were other people where David works also late?

Now let's rewrite these two incidents by changing the circumstances in each and add more information.

ACTIVITY 6
Time guide
20 mins

Deal with the questions which follow each extended case:

1. MRS JONES works in the wages department and on Monday morning she cleared up her work and went around her colleagues in the department to collect money for the purchase of new equipment at a local hospital. She did this collection during an extended coffee break taking about 45 minutes in all. The first person Mrs Jones collected from was her office supervisor. Everybody in the office knew that Mrs. Jones's husband had been treated for cancer at the local hospital. It was also true that, in the past, other people had collected for charities.

Is this still a Disciplinary Offence - Yes, OR No? _____

Is this a case for Disciplinary Action - Yes, OR No? _____

Jot down TWO of your reasons supporting your decision FOR or AGAINST Disciplinary Action:

* _____

* _____

2. MRS. JONES works as a receptionist at a local company and one Wednesday morning she repeatedly left the reception area unattended whilst visiting other offices to collect money. One way and another the collection had taken all morning and Mrs. Jones had tried to keep well clear of the office manager. She was collecting for the sports and social fund at the hospital where her husband works. She also collects every week for the football pools and management had already warned her about the time she was taking on this.

Is this still a Disciplinary Offence - Yes, OR No? _____

Is this a case for Disciplinary Action - Yes, OR No? _____

Jot down TWO of your reasons supporting your decision FOR or AGAINST Disciplinary Action:

* _____

* _____

3. DAVID ROSS is a security guard working on shifts at a chemical factory. When he arrives he relieves the night worker and opens up the main premises for the day's work. David arrives late for the fourth time in two weeks. The effects of this lateness are that the night worker is himself late home and the main premises have not been opened in time.

   David has been warned about his behaviour and on each occasion he has offered no other reason than that he had forgotten to put on his alarm.

Is this still a Disciplinary Offence - Yes, OR No? _____

Is this a case for Disciplinary Action - Yes, OR No? _____

Jot down TWO of your reasons supporting your decision FOR or AGAINST Disciplinary Action:

* _____

* _____

4. DAVID ROSS works in a department of a local council which is concerned with long term planning. Whilst the work is important it is rarely urgent and it is not unusual for he and his colleagues to arrive late. It is normal practice in the office that they will work late without pay if any problems do arise. David is normally a conscientious worker and he has mentioned to the supervisor that his wife is in hospital at the moment. He has two children who are both at school. This is the fourth time this month that David is late for work.

Is this still a Disciplinary Offence - Yes, OR No? _____

Is this a case for Disciplinary Action - Yes, OR No? _____

Jot down TWO of your reasons supporting your decision FOR or AGAINST Disciplinary Action:

* _____

* _____

Now let's review the cases in the light of the new evidence. First, let us remind ourselves that in each case the basic fact **HAS NOT CHANGED.**

* Mrs. Jones in both incidents was still doing something for herself in the company's time.

* David Ross in both incidents was still late for work.

SO IN ALL FOUR CASES WE ARE STILL DEALING WITH BROKEN RULES

However, now that we have new information each case needs reconsidering carefully in the light of this new information:

1. Mrs. Jones in the wages department.

We would have a hard time convincing most people that this was a case for Disciplinary Action. Some of the reasons for this are:

* Her office supervisor knew what was going on.

* She took as little time as possible - using some of her coffee break.

* Other people had done the same thing so there was a precedent.

* Her personal circumstances provided a good reason why she wanted to make the collection.

* She made sure her work was done.

2. Mrs. Jones in the reception area.

The way she is behaving clearly merits some form of disciplinary action. Some of the reasons you might have put down this time are:

* There is no evidence that she asked anybody's permission.

* She spent a long time on the collection.

* She had already had a warning about her behaviour.

* The collection could almost be considered as being for own benefit.

* It is part of her job to be in a specific place. In this case it is important that somebody is there to meet visitors at reception.

Now let's turn to David Ross.

3. David Ross the security man.

It is clearly one which warrants some disciplinary action. Some of the reasons for this are:

* Nobody has been informed by David that he will be late.

* It has happened before.

* David's lateness affects his opposite number directly. The night shift man wants to get home.

* David has no good reason for being late.

* The opening of the main premises was delayed.

4. David in the local council.

In this case disciplinary action would not be appropriate. Some of the reasons for this are:

* He has informed his supervisor.

* David has never been warned about his behaviour - in fact he has a good work record.

* It is normal practice that some lateness does occur.

* He has a good reason for his lateness.

* Timekeeping is not normally vital to the work.

When we started off looking at these examples we said that all disciplinary cases need careful investigation into the circumstances - before taking action.

Now that we have looked at our incidents in more detail it is important to note that we applied the rules **FLEXIBLY**.

In one set of circumstances David Ross's lateness merited disciplinary action. In the other case we said it didn't.

Therefore:

RULES SHOULD BE APPLIED FLEXIBLY

but

THE REASONS FOR BEING FLEXIBLE MUST BE CLEAR

5 Making Judgements

Looking back at these last four incidents we see a number of points which have cropped up time and again. In other words, a pattern has emerged. We can now draw some of these points together.

ACTIVITY 7
Time guide
8 mins

Let's return to our earlier incidents where disciplinary action WAS NOT appropriate - cases 1 and 4. They are repeated here:

Case 1

1. Mrs. Jones works in the wages department and on Monday morning she cleared up her work and went around her colleagues in the department to collect money for the purchase of new equipment at a local hospital. She did this collection during an extended coffee break taking about 45 minutes in all. The first person Mrs Jones collected from was her office supervisor. Everybody in the office knew that Mrs. Jones's husband had been treated for cancer at the local hospital. It was also true that, in the past, other people had collected for charities.

Case 4

4. David Ross works in a department of a local council which is concerned with long term planning. Whilst the work is important it is rarely urgent and it is not unusual for he and his colleagues to arrive late. It is normal practice in the office that they will work late without pay if any problems do arise. David is normally a conscientious worker and he has mentioned to the supervisor that his wife is in hospital at the moment. He has two children who are both at school. This is the fourth time this month that David is late for work.

Note down TWO factors common to both cases that you could use to support a decision NOT TO TAKE disciplinary actin.

eg Both supervisors had been informed

* _____

* _____

The common features includes the following:

1. They had both **KEPT THEIR SUPERVISOR INFORMED.**

2. They had no **PREVIOUS RECORDS** of poor conduct - in fact the opposite seems to be the case.

3. There were **PRECEDENTS** for their behaviour.

4. They had **GOOD PERSONAL REASONS** behind what they did.

5. Both of them tried to keep the problems they caused to a minimum - their action **did not DISRUPT** the job.

ACTIVITY 8
Time guide
8 mins

Let's return to our earlier incidents where disciplinary action **WAS** appropriate - cases 2 and 3. They are repeated here.

Case 2

2. Mrs. Jones works as a receptionist at a local company and one Wednesday morning she repeatedly left the reception area unattended whilst visiting other offices to collect money. One way and another the collection had taken all morning and Mrs. Jones had tried to keep well clear of the office manager. She was collecting for the sports and social fund at the hospital where her husband works. She also collects every week for the football pools and management had already warned her about the time she was taking on this.

Case 3

3. David Ross is a security guard working on shifts at a chemical factory. When he arrives he relieves the night worker and opens up the main premises for the day's work. David arrives late for the fourth time in two weeks. The effects of this lateness are that the night worker is himself late home and the main premises have not been opened in time.

   David has been warned about his behaviour and on each occasion he has offered no other reason than that he had forgotten to put on his alarm.

Note down TWO factors common to both cases that you could use to support a decision TO TAKE disciplinary action.

eg They had both been warned about their conduct.

* _____

* _____

The common features that we should notice this time are:

1. Neither of them KEPT THEIR SUPERVISOR INFORMED.

2. They both had PREVIOUS RECORDS of misconduct.

3. There were no PRECEDENTS for this behaviour.

4. They had POOR PERSONAL REASONS for what they did.

5. Their action DISRUPTED both their own job and that of others.

Now let's round off these two Activities 7 and 8 by comparing and contrasting the sets of common features:

Cases 1 and 4 DISCIPLINARY ACTION WAS NOT APPROPRIATE	Cases 2 and 3 DISCIPLINARY ACTION WAS APPROPRIATE
1. They had both KEPT THEIR SUPERVISOR INFORMED.	1. Neither of them KEPT THEIR SUPERVISOR INFORMED
2. They had no previous RECORDS ofpoor conduct - in fact the opposite seems to be the case.	2. They both had PREVIOUS RECORDS of misconduct.
3. There were PRECEDENTS for their behaviour.	3. There were no PRECEDENTS for this behaviour.
4. They had GOOD PERSONAL REASONS behind what they did.	4. They had POOR PERSONAL REASONS for what they did.
5. Both of them tried to keep the problems they caused to a minimum -their action did not DISRUPT the job.	5. Their action DISRUPTED both their own job and that of others.

From these features we can draw up a useful checklist for judging the severity of a disciplinary offence before deciding on what action to take:

A FIVE-POINT CHECKLIST

1. **Has the supervisor been INFORMED.**
2. **What is the individual's RECORD like.**
3. **Was there any PRECEDENT for the action.**
4. **What were the REASONS behind the action.**
5. **Did the action DISRUPT work.**

Let's have a final check before we move on:

SELF CHECK 3
Time guide
8 mins

The following questions or statements are to do with disciplinary offences.

Respond by completing each sentence with a suitable word or words.

1. Has a supervisor been _____ about the action.
2. You should always bear in mind the individual's past _____.
3. How many _____ had the action taken place.
4. You should check on the _____ why an action took place.
5. How much _____ was there to the work of others.
6. Discipline often involves interpreting _____.
7. You should investigate _____ of a case before making a decision.

The answer to this self check is here in the following words, so you'll need to check out your answers carefully. Typical words you might use: 1. told; informed 2. record; behaviour 3. times; occasions 4. reasons; motive 5. disruption; interruption 6. the rules; the offence; the breach 7. the facts; the circumstances; the background. Other words with the same meaning are also suitable.

6. Summary

1. Discipline involves

   * Rules
   * Procedure
   * Action

2. There are a number of different types of rules that affect us at work:

   * legal rules
   * company rules
   * customary rules

3. A Disciplinary offence always involves the breaking of rules.

4. We should not allocate blame nor apply Disciplinary Action before we carry out a careful investigation into the circumstances of a case.

5. Rules should be applied flexibly bearing in mind the background circumstances.

6. **Our FIVE-POINT CHECKLIST**

   1. **Has the supervisor been INFORMED?**
   2. **What is the individual's RECORD like?**
   3. **Was there any PRECEDENT for the action?**
   4. **What were the REASONS behind the action?**
   5. **Did the action DISRUPT work?**

PART B HANDLING DISCIPLINE

1 Introduction

In the previous section we have seen how the circumstances surrounding a disciplinary case can affect how we deal with it. This makes it difficult to write lists of disciplinary offences and appropriate actions.

One survey of the disciplinary procedures of major British companies and local authorities found that gambling was considered by different companies to be:

* minor disciplinary offence

* ordinary disciplinary offence

* gross misconduct

The reasons for the differences may become obvious when you think about other examples (or look back at the case studies in the previous section). Drinking alcohol may warrant the sacking of somebody who is responsible for the safety of others. On the other hand in an office a blind eye may be turned and it can even become normal practice for example when someone retires.

However, the only safe way of ensuring that our judgement of a disciplinary offence is sound is to make sure that we know all the relevant facts of the case.

2. Getting the Facts

Let's look at how we might handle a disciplinary investigation.

Our starting point must be to establish the facts surrounding the case.

We'll do this in our following activity:

ACTIVITY 9
Time guide
8 mins

Read the case below and then make a note of TWO pieces of information you would need to know before you could consider taking disciplinary action.

Case Incident

XYZ is a medium sized company operating three shifts. The shop floor is divided into a number of different sections and normally two supervisors are on the night shift. For two weeks now a supervisor has been off sick and no proper cover has been arranged.

Towards the end of the night shift Harry Davies, one of the shop floor engineers goes to see the only supervisor available. He complains that some of the men in his unit have set up a card school and they are never back from their breaks on time. Harry claims to represent at least four other men in the section who are all fed up carrying the extra work created because the others were never there on time.

The first piece of information we always need is whether any rules have been broken. However let's assume that two rules have been broken. Gambling at work and not being at the workplace when they should be.

TWO of the pieces of information needed to investigate the case are:

eg When were the alleged incidents taking place.

* _____

* _____

Typical things we would need to know are:

* names of those involved
* are they back on time
* why is the card school taking place
* where were the card schools taking place
* is work being disrupted?

When drawing up lists of items in disciplinary cases it is very important that we think about the information in an orderly fashion. We cannot afford to slip up here, taking disciplinary action is always a serious matter. So is there anything that can help us to get it right?

There may be other alternatives to the one offered here - but you may find this FIVE 'W' formula useful.

Using the Formula we ask the questions:

WHO? WHEN? WHAT? WHERE? WHY?

Let's look at the Formula in more detail.

2.1 The Five 'W' Formula

The FIRST W is - WHO?

Disciplinary offences always involve people and we need to know:

* WHO was involved
* WHO were the witnesses
* WHO are the supervisors involved
* WHO is the trade union representative

The SECOND W is - WHEN?

It is always important to know WHEN an incident happened. A whole argument can be destroyed if we have a vague idea that something happened on a Wednesday afternoon and then a sick note is produced showing that the person wasn't there at the time.

We need to know whether the incident happens in work-time or out of hours.

The THIRD W is - WHAT?

Before any action can be thought about it is vital to know WHAT has occurred. This is never as easy as it sounds. In many disciplinary cases there are likely to be different versions of the same event, especially where the misconduct is serious enough for dismissal.

It follows, therefore, that we must build up a picture of what happened by basing our judgement on sound evidence.

The FOURTH W is - WHERE?

Establishing WHERE a disciplinary offence took place is important for the record. Smoking may be alright in the office but not on the petrol station forecourt. If one of your workteam commits an offence in another section then another supervisor is involved.

The FIFTH W is - WHY?

The final question we need to ask is WHY an incident took place. The answer to this can make the difference between whether something is treated as a disciplinary case or not.

In asking our WHY questions we should remember two things.

* Why did something happen at that TIME or PLACE.
* Why did it involve that PARTICULAR PERSON.

So our FIVE 'W' FORMULA is:

WHO WHEN WHAT WHERE WHY

We can try out this formula in our next activity:

ACTIVITY 10
Time guide
20 mins

Let's demonstrate the value of this formula by looking again at the case incident about Harry Davies and the card school we did earlier in Activity 9. The case incident is repeated here.

XYZ is a medium sized company operating three shifts. The shop floor is divided into a number of different sections and normally two supervisors are on the night shift. For two weeks now a supervisor has been off sick and no proper cover has been arranged.

Towards the end of the night shift Harry Davies, one of the shop floor engineers goes to see the only supervisor available. He complains that some of the men in his unit have set up a card school and they are never back from their breaks on time. Harry claims to represent at least four other men in the section who are all fed up carrying the extra work created because the others were never there on time.

Now repeat your investigation but this time try to use the WHO, WHEN, WHAT, WHERE and WHY formula. (The five 'W' formula.)

You may write down again the points you made last time under the new headings. You may also add any new ones you can think of using the formula.

Write the points in the box below:

1 WHO

2 WHEN

3 WHAT

4 WHERE

5 WHY

The following are typical questions drawn out by using the 5 'W' Formula.

WHO?

* WHO were the members of the alleged card school? - names

* WHO were those Harry said he represents? - names

* WHO were the witnesses? - names

* WHO were the other supervisors? - names

* WHO is the trade union representative? - name

WHEN?

In our case study, When is a particularly important point as it may make a difference as to how we treat the incident. For example, is it a "one off" or a regular card school.

You need to know:

* WHEN did card school sessions take place? - dates and times

* WHEN did they start and finish? - dates and times.

WHAT?

Even though our case incident looks straightforward when it comes to saying what was happening we still need to know:

* WHAT did the card school involve? Gambling for money or for fun.

* WHAT extra work did Harry and his colleagues have to do?

* WHAT is the past record of this kind of offence?

WHERE?

Again, the issue of Where the card school was may not appear important at first sight. However, we should want to know:

* WHERE did the card school take place? - in the canteen;
on the shop floor;

WHY?

In this case it may seem that the why question is irrelevant. This may be a clear breach of disciplinary rules and there are no excuses. However, there are some why questions that can still be raised:

* WHY has Harry come to you - has he a personal grudge which has led him to blow up a small incident out of all proportion?

* WHY are the card games taking place? - is work poorly organised.

* WHY has the information come to you in this way? - supervision needs to be improved.

I think we can claim that:

OUR FIVE 'W' FORMULA CAN BE VERY HELPFUL IN LEADING A SUCCESSFUL INVESTIGATION

3 ACAS Codes of Practice

The importance of being thorough when conducting these kinds of investigations cannot be overstated. Disciplinary action can lead to difficult Industrial Relations problems. For this reason advice has been issued by the Advisory, Conciliation and Arbitration Service (ACAS). This is an independent body funded by the Government to help with industrial relations matters.

They issue advice through publications known as Codes of Practice. These Codes are not binding in law but they should be followed and adapted to an organisations own circumstances.

EXTENSION 3 page 79

The ACAS Code of Practice on Discipline has this to say about investigating disciplinary cases.

> When a disciplinary matter arises, the supervisor or manager should establish the facts promptly before recollections fade, taking into account the statements of any available witnesses..... Before a decision is made or a penalty imposed the individual should be interviewed and given the opportunity to state his or her case.

We can see the Code gives supervisors an important part to play in investigating disciplinary matters. It is, therefore, very important to be well disciplined and thorough when investigating disciplinary cases - this is where our 5 'W' Formula is so useful. It disciplines our thoughts and helps us to cover all the important points in any investigation.

4. Written Records

We will often need to back up the information people give us with written records. For instance:

At a meeting about persistant lateness a supervisor remarks:

"I'm always having to tell him. He's got a terrible record. I think we should give him the sack this time around."!

The works manager replies:

"I've got his file in front of me and he's still got one written warning to go. I'd have "egg on my face" if I'd gone in and told the shop steward I was sacking him."

WRITTEN RECORDS ARE AN IMPORTANT PART OF ANY DISCIPLINARY CASE.

ACTIVITY 11
Time guide
10 mins

There are all sorts of written records kept at work. In each of the short examples given below jot down what written records you might need to consult before making a decision.

1. John Peers is to be disciplined for persistant lateness.

2. Mrs. Smith complains that the work you are giving her is not her job.

3. Mr. Chalker claims never to have been warned about his work before.

The sources of information that we could consult will vary from one organisation to another. However, responses could be on the following lines.

1. John Peers -

Any sources of information about timekeeping, for example, a clocking-in card. The employees past record.

2. Mrs Smith -

Any job title, job description, job grade, or contract that Mrs. Smith has been given. Any demarcation agreement there might be with the trade union.

3. Mr Chalker -

His personal file or record card.

As we see, there is a variety of sources of written information that a supervisor needs to be familiar with.

Having made up our minds about the questions we need to ask and gathered together the written information, we can now take the next step.

5. The Disciplinary Interview

Once we are sure that a disciplinary offence has been committed and we know all the facts and circumstances, then some kind of interview must take place. This can vary from a quiet word at the workplace to a more severe and formal meeting in an office. Whatever form the interview takes we must consider three stages, BEFORE, DURING and AFTER the interview. We will look at each in detail.

5.1 BEFORE the interview we must PLAN

Let's remind ourselves of the case we have looked at in Activities 9 and 10.

> XYZ is a medium sized company operating three shifts. The shop floor is divided into a number of different units and there are normally two supervisors on the night shift. For the past two weeks one of the supervisors has been off and no proper cover has been arranged.
>
> Towards the end of the night shift Harry Davies, one of the shop floor workers goes to see the only supervisor available. He complains that some of the men in his unit have set up a card school and are never back from their breaks on time. Harry claims to represent at least four other men in the section who are fed up carrying the extra work created when the others are not there on time.

In order to plan our meeting we can use our five 'W' formula again.

* WHAT is our meeting about?

  It is alleged that a card school has been started

* WHY do we need this meeting?

  This could well be a disciplinary offence

* WHO should be at this meeting?

  Harry Davies - he made the complaint

  Witnesses - to check the story

  Other supervisors - to find out what they know or may have already done

  The union representative - to keep them in the picture

Who you talk to will depend on the circumstances. Often it will only involve the individual who is being disciplined.

* WHERE should the meeting take place?

Some quiet area away from the workplace is much more likely to produce a satisfactory interview. Talking to somebody on the shop floor or in the office in front of their workmates is not the right approach.

* WHEN should the meeting take place?

We need to give ourselves time to prepare for an interview so we shouldn't rush into it. We may also need to check on when people are available and what times would cause minimum disruption of work.

5.2 DURING the interview

We need to start by telling the person briefly why we have asked to see them. We explain the facts of the case without presenting them as if our mind is already made up.

Compare these two ways of starting an interview with Bill Smith the leading member of the alleged card school in our case incident:

1. The supervisor meets Bill on the shop floor:

   "Look here, Bill, I know you're running a card school so don't deny it. Nobody's getting any work done on your section and I'm sick to the back teeth of the complaints. I'm giving you a written warning. Now get back to work."

2. The supervisor takes Bill into an office:

   "Sit yourself down Bill. I've heard that you are running a card school. I've checked it out and it seems that you're involved, so I've called you in to have a chat about it. You know that this is against company rules so let's hear what you've got to say."

The first approach is likely to put Bill's back up and lead to conflict all round.

The second approach is much more likely to be profitable. It encourages Bill to talk and shows that we haven't yet made up our mind about the case.

We could sum up this approach by saying that what is needed is:

A COURTEOUS BUT FIRM MANNER THAT ENCOURAGES SOMEONE TO TALK

5.3 AFTER the Interview

No meeting should end without people knowing what decisions have been made and what action is to be taken.

ACTIVITY 12
Time guide
8 mins

This is how one supervisor ended his interview with our alleged card player Bill Smith.

> "Right Bill, that's the last time I want to see you in here. I'll get to the bottom of this card school affair and you'll end up being disciplined. I'm warning you not to get involved again. That's my decision and it's final so get out of my office."

Note down what you think is wrong with this ending:

* _____

_____

You will have noticed a number of problems with this supervisor's approach - perhaps they are included here?

* What decision has been made?
* Has Bill been given a warning or not?
* What action is to be taken?
* Is the union representative going to be involved.
* Who is the supervisor going to see.

There are better ways to end meetings!

Let's see how much better this ending could be in our next activity:

ACTIVITY 13
Time guide
8 mins

Read through this statement by another supervisor talking to Bill Smith and note down the good points.

Supervisor: Right Bill, let's just sum up then. You admit that on three separate occasions - we've got the dates here - you were involved in a card school during working time. You also know that was against the works rules. Do you agree?

Bill Smith: Yes.

Shop Steward: Agreed.

Supervisor: You understand that under the agreed procedure I can give you a verbal warning for a first offence and that is what I intend to do. Do you accept that Bill?

Bill Smith: Fair enough.

Shop Steward: That seems fair if it's consistent with what happened to the others.

Supervisor: Yes, you've been involved in all the cases and there's no problem.

OK Bill, so this is an official verbal warning which will be confirmed by me to your union and the Personnel Department. It will stay on your record for six months - that will take us to the 15th August - and if there are no more problems we will wipe the slate clean then.

Any final questions?

Note down the good points: _____

_____

_____

You will have noticed a number of ways in which this ending to the meeting is an improvement on the last.

* The supervisor outlined the case at the beginning
* The supervisor's decision was clear and not open to interpretation
* Bill Smith and his shop steward were given time to make any comment
* The disciplinary action was agreed by all parties
* Bill Smith knew what action was being taken

Summing all this up in a more general way we can note this advice in a DISCIPLINARY INTERVIEW CHECKLIST:

* **Always GO OVER THE CASE AGAIN very briefly and make sure it is understood and agreed**
* **STATE DECISIONS clearly and make sure they are understood**
* **Make plain THE ACTION you are going to take**
* **Make sure a RECORD is kept**
* **INFORM THE APPROPRIATE PEOPLE of your decision**

EXTENSION 4
page 84

Having developed some good ideas of how to handle a discipline problem - why not see how others deal with such problems? You could do this by viewing the video called "PROBLEMS, PROBLEMS" - it develops a sequence of events after two men have a fight and actually exchange blows.

Before moving on let's do a self check which draws on the main material of this section.

SELF CHECK 4
Time guide
5 mins

1. What is our FIVE 'W' formula? Write down the words.

_____ _____

_____ _____

_____

Respond by completing each sentence with a suitable word or words.

2. Before taking disciplinary action we must _____.
3. We should start an interview by outlining _____.
4. At the interview we should encourage the alleged offender to _____.
5. There are two important things that we must do at the end of an interview.

   The first is to make clear our _____.

   The second is to clarify what _____ is to be taken.

The answer to this self check is here in the following words, so you'll need to check out your answers carefully. 1. The five 'W' formula is: who, when, what, where and why - in any order. Typical words you might use are: 2. collect the information; check the facts; investigate thoroughly 3. the facts of the case; what it's about; the offence 4. speak for themselves; explain their point of view 5. first word - decision; judgement second word - action; step Other words with the same meaning are also suitable.

Let's move on to summarise our studies of Part B:

6. Summary

* BEFORE investigating a disciplinary case, we should decide what INFORMATION we need to know and seek out.

  The FIVE 'W' FORMULA can help in any investigation - so can ACAS.

* Our five 'W' Formula is:

  WHO WHAT WHY WHEN WHERE

* It is important both to KEEP and CONSULT written RECORDS

* Disciplinary interviews should UNCOVER the facts and encourage people to speak.

* Decisions should always be clear to all concerned.

* Disciplinary Interviews have THREE stages:

  Before the interview - PLAN the interview

  During the interview - EXPLAIN the reason for the interview

  After the interview - ANNOUNCE the decisions now made

* Disciplinary Interview Checklist:

  * Always GO OVER THE CASE again very briefly and make sure it is understood and agreed

  * STATE DECISIONS clearly and make sure they are understood

  * Make plain THE ACTION you are going to take

  * Make sure a RECORD is kept

  * INFORM THE APPROPRIATE PEOPLE of your decision

PART C DISCIPLINARY PROCEDURES

Note: If your organisation has a disciplinary procedure you might find it useful to have a copy in front of you as you work through this section.

1 Introduction

As all organisations have to cope with disciplinary problems, most of them have developed ways or methods of dealing with them. They are often written down in a DISCIPLINARY PROCEDURE.

This is a sensible approach as it means that discipline can be dealt with in a consistent manner. Everybody knows where they stand.

The need and the wisdom of having a clear procedure is something that is supported by law. The EMPLOYMENT PROTECTION (CONSOLIDATION) ACT requires employers to provide their employees with WRITTEN DETAILS of any rules on discipline which the organisation has.

REFERENCE 4 page 85

All organisations whether they have written procedures or not may face problems if the employee claims that they were dismissed unfairly. However organisations without a written procedure are at a disadvantage compared to those that do.

The best way to see what the law says on dismissal is to refer to the appropriate Code of Practice issued by ACAS. Much of what we say about disciplinary procedures will be based on the advice contained in this ACAS Code.

EXTENSION 3 page 79

The primary purpose of this Code is to help and guide organisations to deal with all disciplinary matters in a way which is within the law. In other words:

CODE OF PRACTICE SHOULD PREVENT SITUATIONS ARISING WHERE THE ORGANISATION COULD BE ACCUSED OF BREAKING THE LAW

We should also note that the law and the Code is modified from time to time so your organisation will make the corresponding changes to their rules and procedures - so

YOU'LL NEED TO KEEP UP TO DATE WITH THESE CHANGES

2. Parts to a Disciplinary Procedure

We have already dealt with the ACAS CODE earlier in the Unit - but let's look at the FOUR main parts to a sound disciplinary procedure:

There's no point trying to commit these details to memory - your company will have their procedures written down for all to see and follow.

The FIRST of these parts is - INVESTIGATE:

* get the facts - gather facts from any witnesses or from other sources eg personal records

* let the accused state their case - get their account of the events.

Our 5 'W' formula will come in useful here.

So the FIRST part to a PROCEDURE is:

INVESTIGATE

The SECOND part to a procedure is

PLAN

Our plan, like all plans, will have certain features:

* it must state what ACTIONS can be taken for an offence

* it must state who has the AUTHORITY to take action

* it will ensure that cases are dealt with as QUICKLY as they can

* offences vary in seriousness - stealing is more serious than minor lateness and a second offence is more serious than a first offence. To deal appropriately with "grades" of offence we need STAGES in a procedure.

If you have your own procedure in front of you then check and see how it deals with these things; otherwise think about how they are normally dealt with at work. Whatever your procedure is there will be some general plan.

So, the SECOND part to a PROCEDURE is:

PLAN

Look at this example of a disciplinary procedure:

> "For a minor offence the supervisor shall issue a verbal warning following investigation which will not normally take more than one day."

Here we can see:

* what ACTION they can take - verbal warning

* who has the AUTHORITY - the supervisor

* how QUICKLY the matter is to be dealt with - normally one day

* we can see that this is an early STAGE of the procedure

The THIRD part to a procedure is REPRESENTATION

The procedure should allow for people to be represented. This is not usually necessary for a first verbal warning but it should always apply if something is to go on the individual's record. Having a representative along ensures that there is a witness to see fair play and that the case is put over properly.

Where trade unions are recognised the representative will normally be a shop steward but it can be a colleague or friend.

So the THIRD part to a PROCEDURE is:

REPRESENTATION

If we carefully follow this procedure then we should be able to deal fairly with all disciplinary cases. However, there may be a rare cases when something has not worked properly. To deal with these occasions a procedure should contain a step which allows a case to be looked at again.

This is particularly important when the case involves dismissal. We must be sure to get things right before we take someone's job away. Therefore a complete procedure will allow for an APPEAL. This will:

* bring fresh minds to the case

* make sure personal bias doesn't creep in

So a FOURTH part to a PROCEDURE is:

RIGHT OF APPEAL

Let's put together these FOUR parts which follow the ACAS Code of practice guidelines. This gives us the following:

CHECKLIST ON PROCEDURES

1 INVESTIGATION

* gather the FACTS of the case

* give individuals the chance to STATE THEIR CASE.

2 PLAN

* show what ACTION may be taken

* show who has the AUTHORITY to make decisions

* show how QUICKLY matters should be dealt with

* show what STAGES are to be used

3 REPRESENTATION

* allow individuals to be REPRESENTED by a union official or a colleague

4 APPEAL

* individuals should have a RIGHT OF APPEAL against a decision

3. Scope of Procedures

At your workplace you may have more than one disciplinary procedure. Sometimes clerical staff and manual work people are covered by different procedures.

It is often the case that senior management are left out of procedures. This is not because they are not subject to discipline - in many cases they will be expected to meet higher standards. However, there will often be different methods to deal with them. They can't be asked to sit in judgement on themselves!

Union representatives are not exempt from disciplinary procedures either. However, because of the possibility of someone being singled out because they are a trade union representative, the ACAS code recommends that for serious disciplinary offences in such cases, an outside full-time union official should be brought in.

4. Procedures in Practice

Now that we have established four steps in a disciplinary procedure, let's see how useful they are in checking out an actual disciplinary procedure:

ACTIVITY 14
Time guide
15 mins

This is an example of a poorly thought out disciplinary procedure. Read it through and deal with the task requirement that follows.

Disciplinary Procedure for Poorboys Chemicals

All disciplinary cases at Poorboys will be dealt with as set out in this procedure.

1. In all disciplinary cases the supervisor shall issue a verbal warning.

2. Where the disciplinary offence is the second or subsequent one, or the offence is serious the supervisor should refer the matter to a superior.

3 If further action is necessary a written warning may be given or the employee may be dismissed.

4. Dismissals should normally not take place without informing the union representative.

5. The employee has the right of appeal to the managing director.

Check out whether this procedure meets the guidelines set out in our Checklist on Procedures noted earlier. This checklist drawn from the ACAS Code of Practice is too lengthy and far too important to attempt to remember - it should be directly used in any analysis.

Write either satisfactory OR unsatisfactory to indicate how well the procedure rates against our checklist.

1 Investigation

* Opportunity to GATHER FACTS? * _____

* Chance to STATE THEIR CASE? * _____

2 Plan

* ACTION clear? * _____

* AUTHORITY possessed? * _____

* How QUICK? * _____

* STAGES shown? * _____

3 Representation

* REPRESENTED by someone else? * _____

4 Appeal

* a right to APPEAL? * _____

1. INVESTIGATION

* There is no chance to GATHER FACTS. The supervisor is asked to issue a warning in ALL disciplinary cases.

* There appears to be no opportunity given for the person to STATE THEIR CASE.

2. PLAN

* It is clear that there are ACTIONS which can be taken. They are verbal warning,written warning or dismissal. However, it is not clear when they are to be used. Written warnings and dismissals are lumped together for example.

* We are given some idea who has AUTHORITY. The supervisor can issue verbal warnings. However, it is not clear who a 'superior' might be.

* There are no time limits at all so we don't know how QUICKLY cases will be dealt with.

* The procedure does have STAGES but they are not very clear or easy to follow.

3. REPRESENTATION

* There is no proper REPRESENTATION procedure. The trade union official is involved at a late stage and then only to be informed.

4. APPEAL

* There is a right of APPEAL but it is not very clear how it works.

So we should really write UNSATISFACTORY against each item of our checklist.

5 Sound Procedures

In contrast to this procedure let's look at one that is used by a large national company. We can go through this procedure fairly quickly. The next activity will help to pick out the main points.

The introduction to the procedure covers the principles of investigation, representation and appeal. The second part shows the stages of the procedure.

Disciplinary Procedure for Goodlads Products

Introduction

Point 1. This procedure covers all staff to the level of Departmental Head.

Point 2. No disciplinary action will be taken without appropriate investigation. This shall include the right of employees to present their case and call witnesses.

Point 3. Every effort will be made to deal with cases as quickly as possible.

Point 4. The trade union shall be informed in writing of all disciplinary offences resulting in written warnings, suspensions or dismissal. The individual shall have the right to trade union representation.

Point 5. Serious offences for which the penalty is dismissal include:

Theft: clocking offences: intoxication: fighting: gross misuse of Company property: conduct likely to endanger persons or property.

Less serious offences include: Absenteeism: lateness.

However, there can be no rigid classification of offences into "serious", "less serious". The circumstances relating to any offence must be taken into consideration before deciding the appropriate course of action.

Point 6. The individual has the right to appeal against any decision. Appeals will be dealt with as quickly as possible by an appeals committee.

Note: Where disciplinary action is contemplated against a trades union representative the circumstances will be discussed with a more senior trades union representative or the local full-time official.

Procedure

Stage I	Offence:	less serious
	Involved:	individual and supervisor
	Result:	verbal warning
Stage 2	Offence:	repeated less serious offence and more serious offence
	Involved:	individual and trade union representative, supervisor and departmental manager
	Result:	written warning

Stage 3	Offence:	Further less serious offence More serious offence
	Involved:	As in Stage 2
	Result:	Final written warning and possible suspension.
Stage 4	Offence:	Final less serious offence Repeated more serious offence Gross misconduct
	Involved:	Individual Department Head and Personnel Manager Senior trade union representative
	Result:	Dismissal

As you can see it is quite a thorough procedure.

Most importantly

* It allows FACTS to be gathered - point 2
* It allows people to STATE THEIR CASE - point 2
* It is clear what ACTION will be taken - stages 1 to 4
* It is clear who has the AUTHORITY - stages 1 to 4
* It encourages cases to be dealt with QUICKLY - point 3
* The STAGES of the procedure are set out - stages 1 to 4
* It allows trade union REPRESENTATION - point 4
* It allows a right to APPEAL - point 6

ACTIVITY 15
Time guide
10 mins

Use the procedure Goodlads Products to show how you would deal with these examples of disciplinary offences.

Note down which stage of the procedure you would use.

e.g. fighting — Stage 4

1. late for a second time without good reason — Stage __

2. theft — Stage __

3. parking in the wrong area of the staff car park — Stage __

4. disobeying a reasonable order after already having one written warning — Stage __

Compare your responses with these:

eg Stage 4 — Fighting is defined as a serious offence that would normally involve dismissal.

1. Stage 2 — This is a repeated less serious offence.

2. Stage 4 — Theft is again a serious offence.

3. Stage 1 — This is normally a minor offence. However, if your car was blocking, say, a hospital entrance, it could be a more serious matter and a later stage could be used.

4. Stage 3 — This is the second time the offence has occurred.

6. Warnings

Earlier on in our unit we looked at "Goodlads" disciplinary procedure. The four stages of that procedure mention FOUR possible disciplinary actions that may follow an offence:

* verbal warnings
* written warnings
* suspension
* dismissal

We saw who had the authority to apply the actions and what action was to be applied to particular offences.

Let's look at who will normally issue each action and for what offence is a particular action appropriate:

* FIRSTLY - Verbal warnings -

These are usually issued by the immediate supervisor and are the first stage in a procedure. In many cases a supervisor will issue an INFORMAL warning eg a quiet word of warning and the matter will rest there. Sometimes, a supervisor will want the warning to be more FORMAL. In some companies these sorts of formal verbal warnings are confirmed in writing. In any case

IT SHOULD ALWAYS BE MADE CLEAR WHEN WARNINGS ARE ISSUED

To take an example, there is the world of difference between these two:

Supervisor: "OK Joe, I saw that, don't let me catch you doing it again."

This is clearly an **INFORMAL WARNING**; compare this with:

Supervisor: "Right Joe, that's the second time you've done that so I'm giving you a formal verbal warning. If it happens again I'm calling in the manager and you'll be in line for a written warning."

This is a FORMAL WARNING and SHOULD ALWAYS BE RECORDED.

* SECONDLY - **Written warnings**

Organisations vary in the number of written warnings that they issue. The warnings should always:

* explain clearly WHY they have been issued
* say WHAT WILL HAPPEN if there is no improvement

A WRITTEN WARNING SHOULD ALWAYS BE PLACED ON RECORD

They would normally be issued after consultation between a supervisor and a manager.

* THIRDLY - **Suspension** -

Suspension should only be used after agreement with senior management. It may be used in two ways.

* firstly to allow INVESTIGATION of a serious matter to take place
* secondly as a PUNISHMENT for a disciplinary offence

Suspension would normally be with pay in the first case. In the second case **SUSPENSION CAN ONLY BE WITHOUT PAY IF THAT IS AN AGREED PART OF THE INDIVIDUAL'S CONTRACT.**

* FOURTHLY - **Dismissal**

Senior management must be involved in dismissal cases. These would occur where there has been gross misconduct or persistent disciplinary offences.

IT IS A SEVERE PUNISHMENT AND GREAT CARE MUST BE TAKEN IN USING IT.

EXTENSION 3
page 79

The ACAS CODE OF PRACTICE advises that disciplinary procedures should:

* "ensure that, except for gross misconduct, no employees are dismissed for a first breach of discipline"

* "ensure that supervisors do not normally have the power to dismiss without reference to senior management"

It is most important that all stages of discipline procedures are handled properly - these may lead to disciplinary dismissals -as many employees have a right to complain under the law if they are unfairly dismissed.

AN IMPORTANT FEATURE OF ALL DISCIPLINARY PROCEDURES IS THAT THEY GIVE PEOPLE THE CHANCE TO IMPROVE.

This DOES NOT mean that there is not some element of punishment. However, a procedure will have achieved its purpose if it STOPS somebody from being late rather than if it punishes them every time they are late.

SELF CHECK 5
Time guide
5 mins

As a quick self check, note down the FOUR possible disciplinary actions that we listed earlier - starting with:

1 Verbal warning

2 _____

3 _____

4 _____

The answers to this self check are here in the following words, so you'll need to check out your answers carefully. 1. Verbal warning - we may enter the fact that a verbal warning has been given on the emplyee's record 2. Written warning - there may be a number of these 3. Suspension - with or without pay 4. Dismissal - with or without a period of notice

7. Appeals

In all cases we must ensure that our disciplinary procedures work fairly and effectively. However, in a few cases, the individual may feel they have not been dealt with properly, or fairly.

EXTENSION 3 page 79

In these circumstances the ACAS CODE OF PRACTICE says that disciplinary procedures should

PROVIDE A RIGHT OF APPEAL AND SPECIFY THE PROCEDURE TO BE FOLLOWED

The importance of this can best be illustrated by an example.

Sheila the supervisor just does not get on with Sandra. When Sandra is late again in spite of two verbal warnings, Sheila invokes Stage 2 of the disciplinary procedure. In spite of Sandra's protest the Departmental Manager backs the supervisor and a written warning is issued. Sandra's union representative appeals for another hearing as she says that Sheila has "got it in" for Sandra. At the appeal it turns out that Sandra had an acceptable reason for her lateness which she couldn't get over in the first interview. The written warning is withdrawn.

THE APPEAL SYSTEM IS A PROTECTION FOR THE INDIVIDUAL AND TO ENSURE FAIR PLAY

Appeals also work both ways. If, in our example, Sheila the supervisor had been right then her judgement would have been strengthened. Sandra couldn't then complain that Sheila 'had it in' for her. So:

THE APPEALS SYSTEM IS ALSO A PROTECTION FOR THE SUPERVISOR

8. Records

It is important that accurate records are kept of formal disciplinary cases.

Each time a FORMAL WARNING is given it should be recorded.

Incomplete or inaccurate records lead to disputes and disagreements.

However, we have seen that procedures are designed to give employees the chance to improve. If improvements are made then it is a good idea for the record to be "wiped clean" after an agreed period of time.

For instance, we wouldn't want to get into a situation of giving a final warning to someone for lateness when the last time it happened was over a year ago!

So, whilst it is important to keep accurate records it is also necessary that the records should be amended where appropriate. Different organisations will have their own views and agreements about how long something stays on the record. It would be fairly common practice for a less serious offence to be taken off after six months and a more serious offence after a year.

Now let's review this section on procedures with a self check.

SELF CHECK 6
Time guide
8 mins

Respond by completing each sentence with a suitable word or words.

1. No disciplinary warnings should be issued without gathering _____.
2. A procedure should give individuals the chance to _____.
3. A procedure must state what _____ are liable to follow disciplinary offences.
4. Procedures should be clear about who has the _____ to make a decision.
5. Procedures often have time limits to allow matters to be dealt with _____.
6. To show how particular offences are to be handled and who is involved a procedure should have a number of _____.
7. There should be a right to be _____ by a trade union official or a colleague.
8. Where someone feels they are not treated fairly they should have the right to _____.

The answers to this self check are here in the following words, so you'll need to check out your answers carefully. Typical words you might use are: 1. the facts; information 2. state their case; put their argument 3. actions; sanctions 4. authority; right 5. quickly; speedily 6. stages; levels 7. represented; accompanied; 8. appeal; review. You may recall the words in capitals here from our discussion of the contents of a disciplinary procedure. Words with the same meaning are also suitable.

Now let's summarise the features of a sound disciplinary procedure:

9. Summary

Disciplinary procedures should contain EIGHT important points shown here under four main headings:

1 INVESTIGATE

* Opportunity for GATHERING FACTS

* Opportunity for STATING THEIR CASE

2 PLAN

* Say what ACTION might be taken

* Say who has the AUTHORITY to make decisions

* Allow for matters to be dealt with QUICKLY

* STAGES for dealing with cases

3 REPRESENTATION

* Allow for REPRESENTATION

4 APPEAL

* Give a right of APPEAL

Where action needs to be taken the choices are:

1 verbal warning - informal and formal

2 written warning

3 suspension - with pay - without pay

4 dismissal

Disciplinary procedures are there to:

* ENCOURAGE PEOPLE TO IMPROVE

* ENSURE FAIR PLAY

* PROTECT SUPERVISORS AND INDIVIDUALS

PART D UNFAIR DISMISSAL AND ACAS

1. Introduction

This part of the Unit is not here to make you a legal whizz kid. However, as a supervisor you are involved in handling discipline cases that could end up being dealt with through the law.

Supervisors are not lawyers. If discipline is handled properly in the first place then we will not get involved with the Law anyway.

So this section is designed to give the legal knowledge needed so that we appreciate the importance of handling discipline correctly at the work place.

We have dealt with a number of occasions where the supervisor deals with discipline which can have important implications.

As you are probably aware, the law affects us in many ways at work. You might be familiar with some of the law on Health and Safety; there might be a copy of the Factories Act in your workplace on the notice board. Most of us have will have a written copy of the main terms and conditions of our employment.

Like most of our law at work that on unfair dismissal sets minimum standards.

IF THESE STANDARDS ARE FOLLOWED OR IMPROVED ON, THEN MOST ORGANISATIONS WILL NOT FALL FOUL OF THE LAW.

2. The Industrial Tribunal

So what happens if an organisation does fall foul of the Law? The answer is that the employee who feels unfairly disciplined may seek to have their case settled in an INDUSTRIAL TRIBUNAL. Let's see how this system operates:

2.1 Industrial Tribunals

These are independent bodies created to hear cases about, for example, sex or race discrimination, maternity pay and redundancy as well as unfair dismissal. There are tribunal offices in the major British towns. Nearly all the cases are open to the public and it is worth going to see one, particularly if you are likely to be involved in a case. You'll be able to see and hear how they work.

EXTENSION 5
page 84

2.2 Going to a tribunal

Someone wishing to complain of unfair dismissal will obtain a copy of a claims form from the office of the Industrial Tribunals. When the form is completed copies are sent to the organisation involved and to ACAS.

ACAS will normally try and bring the parties together and reach a settlement. We will see in a moment that ACAS is mostly successful in doing so. The ACAS officer may suggest an 'out of court' settlement including re-employment or a payment of money in compensation.

If ACAS cannot help to settle the matter then both parties will receive copies of each others claims and the matter will go to a tribunal hearing.

2.3 At the tribunal

Sitting on the tribunal are three people. In the 'chair' is a lawyer, on one side there will be a representative from the employers organisations and on the other, someone from the trade unions. After hearing the evidence they will make a decision - on a majority vote if necessary.

The hearing is meant to be quite informal and as relaxed as possible with both sides presenting their cases. There is the opportunity to call witnesses and for both sides to ask questions.

The tribunal members will also ask questions to help them make up their minds.

2.4 Tribunal decisions

A tribunal hearing rarely exceeds a day and at the end of a hearing a decision will be made. There are normally one of three options open to the tribunal members if the claim is successful.

* RE-INSTATEMENT - the person is awarded their job back

* RE-ENGAGEMENT - the person is offered another job within the company

* COMPENSATION - the person is given financial compensation for the loss of earnings

2.5 Challenging the Tribunal

A challenge to a tribunal's decision can only be made on a point of law so supervisors would not normally be involved in any subsequent challenge.

If either party does disagree then they can appeal right the way through our legal system.

The first of these stages is the Employment Appeals Tribunal. After this a case may go to the ordinary Court of Appeal and even on to the House of Lords. In one or two extreme cases (over a closed shop dismissal for example) a tribunal decision might not be agreed until it has reached the European Court.

This demonstrates clearly, if a little dramatically, why it's necessary to get discipline right in the first place - at the workplace!

3. Unfair Dismissals Statistics

Even the best run organisations may sometimes have an unfair dismissal claim brought against them. In an average year 90 per cent of dismissals take place without any involvement of the law.

THAT DOES MEAN THOUGH, THAT ONE IN TEN PEOPLE WHO ARE DISMISSED MAKE A CLAIM

Many of these could have been avoided if the procedures had been used properly.

Let's look at what happens in a typical year.

(Note: these figures are not the actual figures for any one year, they are based on a number of years and are to give a general idea.)

Our first set of figures shows how many people make a claim under the law that they have been unfairly dismissed. As you can see, over two thirds of the cases are settled when an official of ACAS brings the two parties together. In other words:

MOST OF THEM DON'T GET INTO THE LEGAL PROCESS

Unfair dismissals in a year

Number of claims	30,000	
Number settled with ACAS involvement	20,000	66%
Number dealt with by a tribunal	10,000	33%

In the next set of figures we can see that of the claims that GET TO A TRIBUNAL the majority are lost. The tribunal decided that in three quarters of the cases the person had been fairly dismissed.

Tribunal Cases 10,000 in our example dealt with by a tribunal

Number of UNFAIR dismissals	2,500	25%
Number of FAIR dismissals	7,500	75%

For those who do win their claim the likely result is that they will receive some financial compensation. A very small number of people return to work at the same company. In our example just six per cent of those who go to tribunals finally get their job back.

Tribunal awards 2,500 in our example were unfairly dismissed

Compensation	2,000	80%
Re-employment	150	6% - this is a mere 1/2% of the original 30,000 claims
Other settlement	350	14%

Those who do receive compensation after winning a tribunal case are unlikely to retire to the Bahamas on the proceeds! As we can see from the table, almost half of them will receive less than £2,000.

Amount of Compensation	
less than £500	25 per cent of claims
£500 - £2,000	20 per cent of claims
£500 - £3,000	15 per cent of claims
over £3,000	40 per cent of claims

SELF CHECK 7
Time guide
5 mins

Respond to each statement by writing TRUE or FALSE.

1. Most claims for unfair dismissal are settled without going to a tribunal.

   _____

2. Most people get their jobs back if they win an unfair dismissal claim.

   _____

3. Most people at tribunals win their unfair dismissal claims.

   _____

4. The majority of people get less than £3,000 compensation from a successful claim.

   _____

The answers to this self check are here in the following words, so you'll need to check out your answers carefully. 1. True ACAS settles two thirds of all unfair dismissal claims. 2. False A tiny proportion of those who win claims are re-employed. 3. False Only a quarter of claimants won at tribunals. 4. True 60 per cent got less than £3,000.

PART E UNFAIR DISMISSAL AND THE LAW

1. Introduction

In this section we will look at:

* What the supervisor needs to know about the law.

* What happens if somebody goes to law.

* What are the consequences.

2. The Law

We have already dealt with matters of the law in the previous section.
EXTENSION 3 page 79
On a number of occasions we mentioned the ACAS Code of Practice on Discipline. The Code provides us with guidelines based on the unfair dismissal laws. Although there are no penalties for not following the Code it is good practice to do so. That's why most disciplinary procedures in large organisations follow the same lines.

THEY HAVE USED THE ACAS CODE AND ADAPTED IT FOR THEIR OWN CIRCUMSTANCES

Most of the laws which deal with an individuals rights at work are to be found in an Act of Parliament passed in 1978: The Employment Protection (Consolidation) Act. However a better way of learning
REFERENCE 1 page 85
about employment law is to use the book "INSIDE EMPLOYMENT LAW".

We needn't worry about the details of the law - if a case got that far it would be in the hands of lawyers not supervisors! However, it is helpful to know the basic rules. Let's do this under a number of headings.

3. Kinds of dismissal

It would seem an obvious starting point to say that nobody can claim unfair dismissal unless they have been dismissed!

Of course, this is true but as well as a straightforward sacking it can happen that a dismissal occurs in other ways:

* at the end of a "fixed term" contract - the head of a nationalised industry may be hired for, say, three years

* when a woman is not allowed to return to work after childbirth although it had been agreed that she could

We need not go into the detail of these kinds of 'dismissals' - they rarely involve the supervisor. If you are interested however then you
EXTENSION 6 page 84
might look up two free guides - "FAIR AND UNFAIR DISMISSAL", and "THE LAW ON UNFAIR DISMISSAL".

However, there is a third category which could involve supervisors which we will explore -

* where someone feels "forced" to resign

EVEN WHEN SOMEONE RESIGNS THEY MAY BE ABLE TO CLAIM THEY HAVE BEEN DISMISSED UNFAIRLY

This can happen where the person feels that their employer has made their working life intolerable to a point where they resign.

Consider the case of Joan Smith, a qualified accountant who has worked in the accounts department of her organisation for three years. One morning she is moved on to general adminstrative duties in another office. After two weeks of this her wages are reduced. The company offers no good reason and Joan resigns. She later claims unfair dismissal.

The technical term for this sort of resignation is:

CONSTRUCTIVE DISMISSAL

Because of the significant changes in her duties and pay and because of the way this has been done Joan can claim that her resignation was 'forced'. In other words her employer "constructed" her dismissal. What we must be clear about is whether, when one of our workteam hands in their notice, they do this entirely "off their own bat". Were any changes to their worklife forced on them by us acting unreasonably? If they were then we are open to a claim in law - so we must be careful.

So let's be clear about what constitutes fair dismissal.

4. Fair dismissal

Once it is clear that somebody should be dismissed, we need to turn to the positive side of the law. How can we ensure that a dismissal is fair?

Let's look at FIVE grounds for fair dismissal.

ACTIVITY 16
Time guide
5 mins

Read these two short cases.

* Fred Smith was seen removing a fuse from a plug which stopped a machine working. He said he wanted to give everyone a break! Fred already had a poor work record and he was later dismissed.

* Janet Hannah never seemed to be at work on a Friday. She had been warned in accordance with the procedure and was eventually dismissed.

Note down the general reason for dismissal that would apply to both cases:

* _____

* _____

_____

In both cases it was the conduct or behaviour of the person that led to their dismissal. Their actions have brought them into conflict with company rules.

The reasons you put down may well have related to the actual cases but the general rule is that it is fair to dismiss someone if you can show misconduct and have followed appropriate procedures.

So, our FIRST fair reason for dismissal is

MISCONDUCT

ACTIVITY 17
Time guide
8 mins

Read these two short cases.

* An engineering company takes on Bill Turner as a lathe operator. After three months trial period it is clear that Bill hasn't the ability to get on with the work so he is dismissed.

* Mary Pickering is taken on as a nurse in a children's playgroup. It is later discovered that she has no qualifications for the job and the children are suffering. Mary is told to leave.

Note down the general reason for dismissal that would apply to both cases.

* _____

* _____

In both cases it was the ability or qualification to do the job that was called into question. If someone cannot do a job satisfactorily then it is fair to dismiss them provided care was taken in appointing them and in giving reasonable induction training.

So our SECOND fair reason for dismissal is

LACK OF CAPABILITY OR QUALIFICATION

ACTIVITY 18
Time guide
5 mins

Look at this short case

* Alan Milburn is french polisher but his trade is gradually disappearing as wood is being replaced by plastics. His employer eventually has to tell Alan that there is no more work for him so he will have to leave.

Note down the reason for dismissal:

* _____

* _____

The reason for Alan being asked to go is lack of work. In other words, the job which he has is not needed.

This is our THIRD fair reason for dismissal:

REDUNDANCY

However, it should be borne in mind that someone may be able to claim that they have been UNFAIRLY SELECTED for redundancy. For example, if a company makes a shop steward redundant before anybody else then they might be able to argue that they had been unfairly selected because of their trade union activities.

ACTIVITY 19
Time guide
5 mins

Read these two short cases.

* John Newton worked as a travelling salesman until he lost his driving licence. As a result John was dismissed.

* Mr. Briggs had employed Mary to work behind the counter in his shop. He then found out that Mary was still of school age and so he dismissed her.

Note down the general reason for dismissal that would apply to both cases.

* _____

* _____

In both these cases if the employers had kept either of these two on then this would involve breaking the law.

John Newton cannot drive without a licence and Mary is too young to legally work full time.

Our FOURTH fair reason for dismissal then is:

THEY CANNOT CONTINUE TO DO THEIR JOB WITHOUT BREAKING THE LAW

We have now listed FOUR of our main reasons why somebody can be fairly dismissed. They are:

* MISCONDUCT
* CAPABILITY OR QUALIFICATIONS
* REDUNDANCY
* BREAKING THE LAW

These four points will cover most dismissals - we note that dismissals for MISCONDUCT and REDUNDANCY far outweigh the other reasons.

However, there are times when these categories are not broad enough to contain every dismissal case. Situations can arise when an employer has a good reason for dismissing someone which is not one of those above.

For example there may be difficult personal relationships or somebody may have put false details on their application form.

To cover this, there is a FIFTH group of fair reasons for dismissal. The law calls it

OTHER SUBSTANTIAL REASON

REFERENCE 2 page 85

In the book "PEOPLE AND WORK ORGANISATIONS" there is material on unfair dismissal and ACAS. It may give a few more ideas and a little more background to this sensitive area of discipline.

Having seen that there are good, fair reasons for dismissal we need to have a look at who can claim unfair dismissal and in what circumstances.

5. Claims against Dismissal

Having noted a number of reasons for fair dismissal and cautioning against unfair dismissal we should note that not everyone who is dismissed can actually claim against its unfairness.

There are some people who CANNOT CLAIM unfair dismissal. The most important reason why someone might not be able to claim is that they have not been employed long enough by their organisation.

In most cases for someone to claim UNFAIR DISMISSAL they must fall into one of the following categories:

* worked 16 hours or more per week for two years

THERE IS NO PERIOD OF SERVICE NECESSARY IF SOMEONE CLAIMS THAT THEY HAVE BEEN UNFAIRLY DISMISSED BECAUSE OF THEIR SEX, RACE, NOR FOR MEMBERSHIP OR NON-MEMBERSHIP OF A TRADE UNION

EXTENSION 6
page 84

The issue of union membership can be a complicated one. If you need to know more you should look at THE GUIDES to unfair dismissal mentioned earlier.

SELF CHECK 8
Time guide
5 mins

Don't exceed my time guide here - the details would normally be checked out against the Code of Practice or your company's rules or regulations.

1. List our five reasons for FAIR dismissal:

   i) _____

   ii) _____

   iii) _____

   iv) _____

   v) _____

Write the appropriate numbers in the spaces provided:

2. To claim UNFAIR dismissal someone must have worked at least _____ hours a week for at least _____ years.

3. Someone who works eight hours a week must be employed for at least _____ years for the same organisation before they can claim UNFAIR dismissal.

The answers to this self check are here in the following words, so you'll need to check out your answers carefully. 1. The reasons for dismissal are: i) misconduct ii) capability or qualifications iii) redundancy iv) breaking the law v) other substantial reason 2. 16 hours : 2 years 3. 5 years

WE CANNOT BE EXPECTED TO REMEMBER THESE DETAILS BUT WE SHOULD BE AWARE THAT THERE ARE A NUMBER OF CONDITIONS IN LAW WHICH EMPLOYERS MUST MEET.

6. Acting Reasonably

Let's assume that someone has the right length of service and feels that they have been unfairly dismissed.

In order to defend the case successfully the organisation would need to show two things:

THAT IT HAD A FAIR REASON FOR DISMISSAL

and

THAT IT ACTED REASONABLY IN THE CIRCUMSTANCES

We are now back to the points we raised in our previous sections. We can now see the legal importance of INVESTIGATING discipline cases and dealing with them through a proper PROCEDURE.

IF WE HAVE NOT ACTED REASONABLY IN THE CIRCUMSTANCES THEN, AT THE END OF THE DAY, THE CLAIM FOR UNFAIR DISMISSAL WILL BE WON

What the phrase ACTED REASONABLY means will finally be decided by the tribunal. When making its judgement it will have to take into account the size of an organisation.

> A small "one - man" business cannot be expected to have the same procedure for handling discipline as British Gas. It could hardly be expected to have stages in its procedures involving different levels of management when all the managing is done by one man!

In a larger organisation the question of what is reasonable may be viewed differently.

And again, a local council an employee should not be dismissed for misconduct unless they have had PROPER WARNINGS and been GIVEN A CHANCE TO IMPROVE.

The council shouldn't make anyone redundant until they have checked within the organisation to see whether there is any suitable ALTERNATIVE WORK.

7. Industrial Tribunal Cases

Let's finish off this section by having a look at some real tribunal cases and seeing what decisions were made.

Look at each of these tribunal cases and note down your own views on:

1. Reason for dismissal - misconduct and so on.

2. Whether the organisation acted reasonably.

3. Whether the person was unfairly dismissed.

These cases are based on real tribunal decisions but don't be too concerned if your answer is different from the tribunals - they had far more information to go on.

The cases are to give you an idea how the law works not test whether you could be a solicitor!

ACTIVITY 20
Time guide
8 mins

Betting Shops Ltd. has a rule which says that none of the staff may place bets on behalf of a friend or relative. If they do so they are liable for instant dismissal. Two staff were found to be placing such bets and were sacked. One claimed that he had placed a bet for his brother on one occasion. The second said he made occasional bets on behalf of two old age pensioners. The third was the office manager and he was dismissed for turning a blind eye to what was going on.

1. Was there a potentially fair reason for dismissing all the staff? If so what?

   * _____

   * _____

2. Did the employer act reasonably?

   * _____

   * _____

3. Were the three staff all unfairly dismissed?

   * _____

   * _____

---

1. The potentially fair reason for dismissal was the employees MISCONDUCT. They disregarded a clear company rule.

2. There are different ideas on this point. The employers argued they acted reasonably because their rule was clear and the consequences of breaking it was known.

   The staff argued that the offences were very small and did not involve any real dishonesty for which the rule existed.

3. The tribunal found them unfairly dismissed on the grounds that instant dismissal was unreasonable in all the circumstances. The punishment should fit the crime. The company appealed but the higher court agreed with the tribunal.

   (This case is based on Ladbroke Racing Ltd. v Arnott 1979)

ACTIVITY 21
Time guide
10 mins

Ian McGregor went to work in the oil industry in the Shetland Islands. He found the new environment full of stress and as a result became depressed. This depression worsened and Ian had to have time off work. Ian's company needed somebody to do the job so they checked on his health with his own doctor, with the company's doctor but not with Ian. The doctors both agreed that Ian should not continue his employment in the Shetlands so the company dismissed him.

1. Was there a potentially fair reason for dismissal? If so, what?

   * _____

   _____

2. Did the employer act reasonably?

   * _____

   _____

3. Was Ian McGregor fairly dismissed?

   * _____

   _____

---

1. The potentially fair reason for dismissal was CAPABILITY. Ian's illness making him incapable of doing the job

2. The employers argued that they acted reasonably. They needed somebody to do Ian's job and both doctors said that he was unlikely to be able to continue.

   Ian argued that they were unreasonable in dismissing him without giving him the chance to STATE HIS CASE.

3. The tribunal said the company had acted reasonably and that Ian was fairly dismissed. On appeal the company was supported again and it was pointed out that anything Ian had said would have made little difference to the case. However, it is poor practice not to consult the employee or give them warnings.

   As a general rule in health cases, an organisation has to weigh up the damage that is being done to the business against the need to treat somebody who is ill with humanity.

   The size of the company is very important on this point. For example a local council employing 1,000 people may be expected to carry someone for six months; a small company may not be able to lose a key operator for six weeks.

   (This case is based on Taylorplan Catering (Scotland) Ltd. v McInally 1980)

ACTIVITY 22
Time guide
10 mins

LMN Ltd. was an electricl contracting company. It employed electricians to work on construction sites. When the work on one site came to an end all the workers on that site were dismissed by LMN. Workers on the company's other sites were kept on although some of them had a much shorter length of employment than those who had been dismissed.

1. Was there a potentially fair reason for dismissal? If so, what?

   * _____

   _____

2. Did the employer act reasonably?

   * _____

   _____

3. Were the electricians unfairly dismissed?

   * _____

   _____

---

1. The potentially fair reason was REDUNDANCY. The work for which the men had been employed had disappeared when the building work was completed.

2. The employer argued that he acted reasonably as there was no longer any work and he had given due notice.

   The electricians argued that the company was unreasonable as there was still work even though it was on a different site. They also said that the selection was unfair as some of them had been employed by the company for years whereas some of those on the other site had only been employed for weeks.

3. The tribunal (supported by the appeal court) thought that the decision to dismiss was unfair. Some electricians had been unfairly selected for redundancy. They argued that length of service was something that was normally taken into account in redundancy cases.

   (This case is based on Watling (N.C.) Ltd. v Richardson 1978)

As you can see from these examples unfair dismissal cases are rarely straightforward. Tribunals always try to ensure that the law is implemented reasonably. They will take into account all the circumstances so even cases that look the same on the surface can come up with different answers.

8 Summary

1 MOST DISMISSALS (90 percent) take place WITHOUT any legal involvement.

2 Of the cases that go to law, VERY FEW result in someone getting their JOB BACK and most end in COMPENSATION of £3,000 OR LESS.

3 DISMISSAL takes place when:

* someone is given notice
* a contract ends
* a woman is not allowed to return after childbirth although it was agreed that she would
* someone is forced to resign

4 There are five potentially FAIR REASONS for dismissal:

* misconduct
* capability or qualification
* redundancy
* breaking the law
* other substantial reason

5 To QUALIFY for unfair dismissal an employee needs the appropriate service.

* 1 year in companies with more than 20 employees
* 2 years in companies with 20 or less employees
* 5 years if someone works less than 16 hours a week

6 For someone to be FAIRLY DISMISSED employers must show that they ACTED REASONABLY in all the circumstances

7 UNFAIR DISMISSAL cases are held in Industrial Tribunals if ACAS fail to achieve a settlement.

8 UNFAIR DISMISSAL cases can go through the full legal process - to House of Lords and European courts.

PART E PERFORMANCE CHECKS

Time guide
60 mins

1 End Check

You may now review your understanding of the Unit as a whole by completing this group of questions. **DON'T GUESS THE ANSWERS** - if you're not sure, flick back into the Unit and check before responding.

If you are still unsure then put a question mark against your response before proceeding.

TRUE/FALSE

Respond to each statement by writing TRUE or FALSE in the space provided.

1 All disciplinary offences involve breaking a rule. _____

2 Some disciplinary offences are so obvious that you don't need to ask why they have occurred. _____

3 You should always check the written records before making a disciplinary decision. _____

4 It doesn't matter where a disciplinary offence takes place it will still merit the same disciplinary action. _____

5 The purpose of time limits in disciplinary procedures is to make sure cases are dealt with quickly. _____

6 Appeals procedures only favour the person who has committed the disciplinary offence. _____

7 Everybody with over one year's service can claim unfair dismissal. _____

8 All Tribunal claims are referred to ACAS. _____

COMPLETION

Respond by completing each sentence with a suitable word or words.

9 We cannot apply disciplinary rules properly without careful _____ of the circumstances.

10 The different sources of disciplinary rules are rule of law _____ rules and customary rules.

11 At a disciplinary interview the individual should always be given the chance to _____

12 At the end of a disciplinary interview you should make clear what _____ you are going to take.

13 The best way to deal with disciplinary problems is to have a standard _____.

14 In disciplinary cases people should have the right to be _____ by a union representative or a colleague.

15 For a dismissal to be fair, employers must show that they acted in a _____ manner.

16 Tribunals may award a successful claimant reinstatement; re-engagement or _____.

MULTIPLE CHOICE

Respond to each question by putting a tick against **the ONE answer which is most correct.**

17 Disciplinary rules should be applied:

a) in all cases

b) with leniency

c) with flexibility

d) rigidly

18 The most appropriate action to take for serious fighting at work is:

a) verbal warning

b) instant dismissal

c) final written warning

d) suspension

19 One of these words IS NOT in our 5 'W' Formula.

a) Why

b) What

c) Who

d) Which

20 A disciplinary procedure should be designed to:

a) keep your boss informed

b) punish people

c) get rid of troublemakers

d) help people to improve

21 The FIRST STAGE of a disciplinary procedure should be the responsibility of

a) departmental manager

b) trade union representative

c) ACAS

d) supervisor

22 Written warnings should be regarded most importantly as

a) aids to improving behaviour

b) just for the record

c) punishment

d) information for senior management

23 In a typical year, of 10,000 tribunal cases, what percentage of people would be awarded their jobs back

a) about 10 per cent

b) 1 per cent or less

c) over 25 per cent

d) about 5 per cent

24 Which of the following is NOT a potentially fair reason for dismissal

a) misconduct

b) redundancy

c) qualifications

d) trade union activity

END CHECK - Checkout

Audio Tape
Side 2
Time guide
35 mins

The answers and explanations for these End Checks are on side 2 of our Audio Tape. Have your responses with you as you play this tape. As you listen you can check out how well you have done and make notes as you proceed.

2 Tutor check

Time guide 60 mins

Read through this case incident, then deal with the accompanying questions.

Andrew Lennox works in the drawing office at GHI Ltd. He has been employed for 3 years and has a reasonably good disciplinary record.

He usually arrives early for work - about half an hour before everybody else. This is no problem as the company works a flexi-time system which allows staff to clock in and out when they want. In Andrew Lennox's case he usually left half an hour early.

Doug Miller, the drawing office supervisor has become suspicious of Andrew's work. Although he arrives half an hour early Andrew does not often seem to do any extra work by the time the others arrive.

Doug Miller thinks Andrew might be working on his own account. He does not tell anybody but decides one morning to turn up early himself and see what Andrew is doing.

When he arrives Doug goes straight to Andrew's desk and asks to look at the plans he is working on. Andrew tries to pull something out from the bottom of a pile but Doug can see clearly tat he is working on designs for a house extension. The company's work was solely in the commercial field so Doug confronted Andrew.

Doug Miller: "Right, I can see you're doing your own work. I've been watching you for some time. You can pack up your things and I'll take you to see Mr. Blake in Personnel when he arrives."

Andrew Lennox: "It's only a small piece of work Mr. Miller. It's only taken me ten minutes and I haven't done it before. There's no need to take it further."

Doug Miller: "I'm afraid there is; I've been watching you for some time. Doing private work in company time amounts to stealing and that's gross misconduct. As far as I'm concerned you're for the sack."

Later in the morning Andrew Lennox is called in to see the Personnel Director David Blake. Mr. Blake has already heard Doug Miller's version of events. He asks Andrew if he has anything to say. Andrew admits doing the private work that morning but says again that it is the first time. In spite of this David Blake confirms that doing private work is a serious disciplinary offence. He adds that he cannot afford to set a precedent by letting Andrew 'off the hook' so he is backing his supervisor and giving Andrew Lennox one week's notice. Andrew replies that he will be claiming unfair dismissal at an industrial tribunal.

Note: The company's disciplinary procedure allows for one verbal warning; a first written warning and a final written warning. There is also provision or suspension with or without pay at the company's discretion.

Instant dismissal is appropriate in the case of gross misconduct and stealing is included in the list of such behaviour.

The procedure has been agreed with the trade union. Andrew Lennox is a member of his union.

You only need to write ONE or TWO sentences against each question.

1. What else could Doug Miller have done?

2. What else could David Blake have done?

3. What points will the Tribunal take into account when coming to its decision?

4. What do you think will be the outcome of the case.

5. What reasons do you think the Tribunal will give for its judgement?

Send to Tutor

Now get your answers to your study tutor either by post or handing it over personally. You will receive your tutor's assessment and comment back through the post as soon as can be managed.

3. Work-based Project

Time guide 60 mins

Here is the checklist of principles for a sound disciplinary procedure.

1. Investigation

* provide the opportunity for gathering FACTS

* give individuals the chance to STATE THEIR CASE

2. Plan

* show what ACTION may be taken

* show who has the AUTHORITY to make decisions

* show how QUICKLY matters should be dealt with

* show what STAGES are to be used

3. Representation

* allow individuals to be REPRESENTED by a union official or a colleague

4. Appeal

* individuals should have a right to APPEAL against a decision

This project asks you to apply a discipline procedure to a number of short incidents.

PART - 1. Do EITHER A or B below:

A IF YOUR ORGANISATION HAS A WRITTEN DISCIPLINARY PROCEDURE:

Get a copy of your organisation's disciplinary procedure. Show clearly with examples from the procedure that it covers each item in our checklist. Where it fails to do so suggest suitable additions to improve it.

OR

B IF YOUR ORGANISATION DOES NOT HAVE A DISCIPLINARY PROCEDURE:

By referring to our checklist draw up a suitable procedure for your organisation. You could use as a model the one we considered - Goodlads Products in Section C.

PART - 2. Read each of the offences below and write into the space provided the stage of the procedure which you think is appropriate for the offence.

* You find one of your workteam in the rest-room smoking a cigarette when he should be at his workplace.

Stage _____

* You find a group of your people waiting at the clocking out station against company rules.

Stage _____

* You learn that one of your workteam has stolen a colleague's leather jacket.

Stage _____

* One of your workteam verbally abuses you in front of others.

Stage _____

* One of your workteam is late for the fourth time this month without good reason.

Stage _____

* Two of your workteam have an argument which ends in physical fighting.

Stage _____

Send to Tutor

Now get your answers to your study tutor either by post or handing it over personally. You will receive your tutor's assessment and comment back through the post as soon as can be managed.

PART G UNIT REVIEW

Having completed your work on this unit let's review how you feel about each of our four opening objectives. I will repeat them here and add comment:

You should now be better able to:

* IDENTIFY A DISCIPLINARY OFFENCE

Our important focus was that a disciplinary offence always involves breaking a rule or rules - whether this be a legal, company or a customary rule. Therefore the need to be fully aware of all the rules at the workplace cannot be over emphasised. So you could read rule books and ask management colleagues about your rules. If you genuinely FEEL more confident in recognising a disciplinary offence then you have achieved this objective. Now to our second objective -

You should now be better able to:

* UNDERSTAND HOW THE LAW AFFECTS DISCIPLINARY PROBLEMS

You should now be well aware that the law is involved in matters of discipline. Of course it is mostly well in the background - but you cannot ignore its presence. Fortunately, ACAS codes of practice give sound guidelines which if followed will keep you on the right side of the law. Checking how well your company procedures match the ACAS code is a very useful exercise. If you now know how the law can affect the handling of disciplinary matters, then you have achieved this objective. Now to our third objective -

You should now be better able to

* LIST THE VITAL FEATURES OF A DISCIPLINARY PROCEDURE

You cannot be expected to remember all these features - though you might recall the FOUR main headings. You should however, be more aware that a laid down procedure has many advantages which will protect you and others involved from later criticism. It will keep the law out of the workplace - always a desirable aim! If you now know HOW to keep the law out of your section then you have achieved this objective. Now to our fourth objective -

You should now be better able to

* OPERATE YOUR COMPANY'S DISCIPLINARY PROCEDURES

It seems clear that by meeting these first three objectives that you are well on the way to being able to put company procedures into practice. You will recognise that this objective involves putting into practice what you know. Therefore you must see the proper operation of procedures as your opportunity to develop the necessary skills - thus you will develop confidence in what you KNOW and what you can DO. If you are now better able to operate all those steps in your procedures where you become involved, then you have achieved this fourth crucial objective.

I hope that this work you have done was enjoyable and useful enough to encourage you to continue your studies.

1 Extensions

I recommend that you take up as many of these extensions as you can. They will further increase your understanding and interest. You will also be able to check out a number of the ideas that I mention in the Unit. The extra time and effort will prove very worthwhile.

EXTENSION 1 Book: Supervisory Management

Author: David Evans

Publisher: Holt, Rinehart and Winston

See section 20 "THE BACKGROUND TO THE LAW" - it will give a quick overview of the law and its scope to our lives both in and out of work.

EXTENSION 2 Workplace rules - your company will have a number of workplace rules. These are likely to be written up in some form of Rule Book or Employees Handbook. It is expected of you that you are familiar with these rules and the procedures which should follow any breach. Make sure you have a copy, flick through it now and again to make sure that you remain familiar with its contents.

EXTENSION 3 ACAS Code

Advisory Conciliation and Arbitration Service

Code of Practice No 1

Disciplinary Practice and Procedures in Employment

Introduction

This code supersedes paragraphs 130 to 133 (inclusive) of the Code of Practice in effect under Part I of Schedule I to the Trade Union and Labour Relations Act 1974, which paragraphs shall cease to have effect on the date on which this Code comes into effect.

1 This document gives practical guidance on how to draw up disciplanary rules and procedures and how to operate them effectively. Its aim is to help employers and trade unions as well as individual employees - both men and women - wherever they are employed regardless of the size of the organisation in which they work. In the smaller establishments it may not be practicable to adopt all the detailed provisions, but most of the features listed in paragraph 10 could be adopted and incorporated into a simple procedure.

Why have disciplinary rules and procedures?

2 Disciplinary rules and procedures are necessary for promoting fairness and order in the treatment of individuals and in the conduct of industrial relations. They also assist an organisation to operate effectively. Rules set standards of conduct at work; procedure helps to ensure that the standards are adhered to and also provides a fair method of dealing with alleged failures to observe them.

3 It is important that employees know what standards of conduct are expected of them and the Contracts of Employment Act 1972 (as amended by the Employment Protection Act 1975) requires employers to provide written information for their employees about certain aspects of their disciplinary rules and procedures.

4 The importance of disciplinary rules and procedures has also been recognised by the law relating to dimissals, since the grounds for dismissal and the way in which the dismissal has been handled can be challenged before an industrial tribunal. Where either of these is found by a tribunal to have been unfair the employer may be ordered to reinstate or re-engage the employees concerned and may be liable to pay compensation to them.

Formulating policy

5 Management is responsible for maintaining discipline within the organisation and for ensuring that there are adequate disciplinary rules and procedures. The initative for establishing these will normally lie with management. However, if they are to be fully effective the rules and procedures need to be accepted as reasonable both by those who are to be covered by them and by those who operate them. Management should therefore aim to secure the involvement of employees and all levels of management when formulating new or revising existing rules and procedures. In the light of particular circumstances in different companies and industries trade union officials may or may not wish to participate in the formulation of the rules but they should participate fully with management in agreeing the procedural arrangements which will apply to their members and in seeing that these arrangements are used consistently and fairly.

Rules

6 It is unlikely that any set of disciplinary rules can cover all circumstances that may arise: moreover the rules required will vary according to particular circumstances such as the type of work, working conditions and size of establishment. When drawing up rules the aim should be to specifiy clearly and concisely those necessary for the efficient and safe performance of work and for the maintenahce of satisfactory relations within the workforce and between employees and management. Rules should not be so general as to be meaningless.

7 Rules should be readily available and management should make every effort to ensure that employees know and understand them. This may be best achieved by giving every employee a copy of the rules and by explaining them orally. In the case of new employees this should form part of an induction programme.

8 Employees should be made aware of the likely consequences of breaking rules and in particular they should be given a clear indication of the type of conduct which may warrant summary dismissal.

Essential features of disciplinary procedures

9 Disciplinary procedures should not be viewed primarily as a means of imposing sanctions. They should also be designed to emphasise and encourage improvements in individual conduct.

10 Disciplinary procedures should:

(a) Be in writing.

(b) Specify to whom they apply.

(c) Provide for matters to be dealt with quickly.

(e) Specify the levels of management which have the authority to take the various forms of disciplinary action, ensuring that immediate superiors do not normally have the power to dismiss without reference to senior management.

(f) Provide for individuals to be informed of the complaints against them and to be given an opportunity to state their case before decisions are reached.

(g) Give individuals the right to be accompanied by a trade union representative or by a fellow employee of their choice.

(h) Ensure that, except for gross misconduct, no employees are dismissed for a first breach of discipline.

(i) Ensure that disciplinary action is not taken until the case has been carefully investigated.

(j) Ensure that individuals are given an explanation for any penalty imposed.

(k) Provide a right of appeal and specify the procedure to be followed.

The procedure in operation

11 When a disciplinary matter arises, the supervisor or manager should first establish the facts promptly before recollections fade, taking into account the statements of any available witnesses. In serious cases consideration should be given to a brief period of suspension while the case is investigated and this suspension should be with pay. Before a decision is made or penalty imposed the individual should be interviewed and given the opportunity to state his or her case and should be advised of any rights under the procedure, including the right to be accompanied.

12 Often supervisors will give informal oral warnings for the purpose of improving conduct when employees commit minor infringements of the established standards of conduct. However, where the facts of a case appear to call for disciplinary action, other than summary dismissal, the following procedure should normally be observed:

(a) In the case of minor offences the individual should be given a formal oral warning or if the issue is more serious, there should be a written warning setting out the nature of the offence and the likely consequences of further offences. In either case the individual should be advised that the warning constitutes the first formal stage of the procedure.

(b) Further misconduct might warrant a final written warning which should contain a statement that any recurrence would lead to suspension or dismissal or some other penalty, as the case may be.

(c) The final step might be disciplinary transfer, or disciplinary suspension without pay (but only if these are allowed for by an express or implied condition of the contract of employment), or dismissal, according to the nature of the misconduct. Special consideration should be given before imposing disciplinary suspension without pay and it should not normally be for a prolonged period.

13 Except in the event of an oral warning, details of any disciplinary action should be given in writing to the employee and if desired, to his or her representative. At the same time the employee should be told of any right of appeal, how to make it and to whom.

14 When determining the disciplinary action to be taken the supervisor or manager should bear in mind the need to satisfy the test of reasonableness in all the circumstances. So far as possible, account should be taken of the employee's record and any other relevant factors.

15 Special consideration should be given to the way in which disciplinary procedures are to operate in exceptional cases. For example:

(a) Employees to whom the full procedure is not immediately available. Special provisions may have to be made for the handling of disciplinary matters among nightshift workers, workers in isolated locations or depots or others who may pose particular problems for example because no one is present with the necessary authority to take disciplinary action or no trade union representative is immediately available.

(b) Trade union officals. Disciplinary action against a trade union official can lead to a serious dispute if it is seen as an attack on the union's functions. Although normal disciplinary standards should apply to their conduct as employees, no disciplinary action beyond an oral warning should be taken until the circumstances of the case have been dicussed with a senior trade union representative or full-time official.

(c) Criminal offences outside employment. These should not be treated as automatic reasons for dismissal regardless of whether the offence has any relevance to the duties of the individual as an employee. The main considerations should be whether the offence is one that makes the individual unsuitable for his or her type of work or unacceptable to other employees. Employees should not be dismissed solely because a charge against them is pending or because they are absent through having been remanded in custody.

Appeals

16 Grievance procedures are sometimes used for dealing with disciplinary appeals though it is normally more appropriate to keep the two kinds of procedure separate since the disciplinary issues are in general best resolved within the organisation and need to be dealt with more speedily than others. The external stages of a grievance procedure may however be the appropriate machinery for dealing with appeals against disciplinary action where a final decision within the organisation is contested or where the matter becomes a collective issue between management and a trade union.

17 Independent arbitration is sometimes an appropriate means of resolving disciplinary issues. Where the parties concerned agree, it may constitute the final stage of procedure.

Records

18 Records should be kept, detailing the nature of any breach of disciplinary rules, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records should be carefully safeguarded and kept confidential.

19 Except in agreed special circumstances breaches of disciplinary rules should be disregarded after a specified period of satisfactory conduct.

Further action

20 Rules and procedures should be reviewed periodically in the light of any developments in employment legislation or industrial relations practice and, if necessary, revised in order to ensure their continuing relevance and effectivness. Any amendments and additional rules imposing new obligations should be introduced only after reasonable notice has been given to all employees and, there appropriate, their representatives have been informed.

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EXTENSION 4 Video Cassette "PROBLEMS, PROBLEMS"

Number 7 in the BBC series "SUPERVISOR".

The opening sequence centres on an incident where two men have been involved in a fight. Blows have been exchanged at the workplace and the supervisor has to take immediate and follow up action.

Ask your Training Officer or someone in Personnel if they have a copy and can arrange a viewing for you. Your Resource Centre has a copy and will be able to arrange a viewing.

EXTENSION 5 Visit a Tribunal

The address of your nearest office will in the 'phone book under "Advisory Conciliation and Arbitration Service". Telephone them and ask when their next cases are being heard and where they are to take place.

EXTENSION 6 Fair and Unfair Dismissal: A guide for employers

(Department of Employment booklet PL 714 Free)

Joan Henderson: The Law on Unfair Dismissal: Guidance for small firms

(Department of Employment booklet PL 715 Free)

These extension opportunities can all be taken up via your Resource Centre.

They will either have the materials or will arrange that you have access to the materials. However it may be more convenient to check out the materials with your Personnel or Training people at work - they may well give you access. There are other good reasons for approaching your own people, for example they will become aware of your interest and you can involve them in your development.

2 References

REFERENCE 1 Book: Inside Employment Law - A Guide for Managers

Author: David Field

Publisher: Pan 1982

REFERENCE 2 Book: People and Work Organisations

Authors: J C Capey and N R Carr

Publisher: Holt, Rinehart and Winston

See Section 7.9 "The Trade Unions and Labour Relations Act" - it contains material on unfair dismissal and ACAS.

REFERENCE 3 Book: Supervisory Management

Author: David Evans

Publisher: Holt, Rinehart and Winston

See the sections 24.2 The ACAS Codes and 27.11 The Rule of ACAS for further material on the scope of ACAS and how ACAS works.

REFERENCE 4 Book: Supervisory Management

Author: David Evans

Publisher: Holt, Rinehart and Winston

See Section 22.4 The Employment Protection Act for a brief account of what this Act covers.

These references can all be taken up via your Resource Centre. They will either have the materials or will arrange that you have access to the materials. However it may be more convenient to check out the materials with your Personnel or Training people at work - they may well give you access. There are other good reasons for approaching your own people, for example they will become aware of your interest and you can involve them in your development.

If you do wish to make use of these references then don't think that you must read them right through. Just dip into them for a slightly wider treatment of the topic raised by the unit.

I should warn that the language and style of the writing is often difficult to cope with. So don't struggle with it too much. Do what I do when in difficulty, put the book back on the shelf and find a better one!

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